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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 120919471-2584-01]

RIN 0648-BC59

Temporary Rule to Increase the Commercial Annual Catch Limit for  
South Atlantic Yellowtail Snapper

AGENCY: National Marine Fisheries Service (NMFS), National  
Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; emergency action.

SUMMARY: NMFS issues this temporary rule to increase the  
commercial annual catch limit (ACL) for yellowtail snapper, as  
requested by the South Atlantic Fishery Management Council  
(Council). NMFS has determined that the commercial ACL may be  
increased from 1,142,589 lb (518,270 kg) to 1,596,510 lb  
(724,165 kg). This temporary rule will be effective for 180  
days, unless superseded by subsequent rulemaking, although NMFS  
may extend the rule's effectiveness for an additional 186 days  
pursuant to the Magnuson-Stevens Act. The intent of this  
temporary rule is to preserve a significant economic opportunity  
for the yellowtail snapper component of the South Atlantic  
snapper-grouper fishery that might otherwise be foregone and to

help achieve optimum yield (OY) for the fishery.

DATES: This temporary rule is effective [insert date of publication in the FEDERAL REGISTER], through [insert date 180 calendar days after date of publication in the FEDERAL REGISTER]. Comments may be submitted through [insert date 30 days after date of publication in the FEDERAL REGISTER].

ADDRESSES: You may submit comments on the temporary rule identified by "NOAA-NMFS-2012-0207" by any of the following methods:

- Electronic submissions: Submit electronic comments via the Federal e-Rulemaking Portal:  
<http://www.regulations.gov>. Follow the "Instructions" for submitting comments.
- Mail: Kate Michie, Southeast Regional Office, NMFS,  
263 13th Avenue South, St. Petersburg, FL 33701.

Instructions: All comments received are a part of the public record and will generally be posted to <http://www.regulations.gov> without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information. NMFS will accept anonymous comments (enter N/A in the required field if you wish

to remain anonymous).

To submit comments through the Federal e-Rulemaking Portal: <http://www.regulations.gov>, enter "NOAA-NMFS-2012-0207" in the search field and click on "search." After you locate the temporary rule, click the "Submit a Comment" link in that row. This will display the comment web form. You can then enter your submitter information (unless you prefer to remain anonymous), and type your comment on the web form. You can also attach additional files (up to 10MB) in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

Comments received through means not specified in this rule will not be considered.

For further assistance with submitting a comment, see the "Commenting" section at <http://www.regulations.gov/#!faq> or the Help section at <http://www.regulations.gov>.

Electronic copies of the documents in support of this temporary rule may be obtained from the Southeast Regional Office Web site at <http://sero.nmfs.noaa.gov/sf/SASnapperGrouperHomepage.htm>.

FOR FURTHER INFORMATION CONTACT: Kate Michie, Southeast Regional Office, NMFS, telephone: 727-824-5305, email: [Kate.Michie@noaa.gov](mailto:Kate.Michie@noaa.gov).

SUPPLEMENTARY INFORMATION: NMFS and the Council manage the

snapper-grouper fishery off the southern Atlantic states under the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region (FMP). The Council prepared the FMP and NMFS implements the FMP through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). Section 305(c) of the Magnuson-Stevens Act (16 U.S.C. 1855(c)) provides the legal authority for the promulgation of emergency regulations.

#### Background

The final rule for the Comprehensive Annual Catch Limit Amendment (Comprehensive ACL Amendment) to the Fishery Management Plan (FMP) for the Snapper-Grouper Fishery of the South Atlantic Region, and several other plans (77 FR 15916, March 16, 2012), effective April 16, 2012, implemented, in part, ACLs and accountability measures (AMs) for yellowtail snapper, as required by National Standard 1 of the Magnuson-Stevens Act. The commercial ACL for yellowtail snapper implemented through the final rule for the Comprehensive ACL Amendment is 1,142,589 lb (518,270 kg), round weight. The AM implemented through that rule states that the commercial sector will close if commercial landings reach or are projected to reach the commercial ACL.

On September 4, 2012 (77 FR 53776), NMFS published a

temporary rule to close the commercial sector for yellowtail snapper in the South Atlantic on September 11, 2012, because NMFS determined that the commercial ACL for yellowtail snapper would be reached by that date. However, updated information revealed that yellowtail snapper could remain open for additional time until the ACL was reached. NMFS announced through a Fishery Bulletin on September 10, 2012, the cancellation of the previously announced closure. NMFS published a temporary rule on September 13, 2012 (77 FR 56563) with similar information. This would have been the first time yellowtail snapper would have closed in season since the ACL was first implemented in April 2012.

A new stock assessment for yellowtail snapper was completed by the Florida Fish and Wildlife Conservation Commission (FWCC), Fish and Wildlife Research Institute (FWRI), in May 2012, and reviewed by the Center for Independent Experts. The assessment indicates that the stock is not overfished nor undergoing overfishing. Results of the stock assessment suggest that the ABC could increase, which could allow an increase in the commercial ACL and positive social and economic benefits to commercial fishermen and dealers. The assessment was reviewed by the SSC on October 10, 2012. The SSC recommended the ABC for yellowtail snapper could increase to 4,050,000 lb (1,837,049 kg)

based on the assessment. The South Atlantic Comprehensive ACL Amendment and the Generic ACL Amendment to the Red Drum, Reef Fish Resources, Shrimp, and Coral and Coral Reefs FMPs for the Gulf of Mexico (Generic ACL Amendment) (76 FR 82044, December 29, 2011) allocated 25 percent of the yellowtail snapper ABC to the Gulf of Mexico and 75 percent of the yellowtail snapper ABC to the South Atlantic. The Comp ACL Amendment and Generic ACL Amendment set the ABC equal to the ACL. Therefore, the ABC/ACL for the Gulf of Mexico would be 1,012,500 lb (459,262 kg), round weight, and the ABC/ACL for the South Atlantic would be 3,037,500 lb (1,377,787 kg), round weight. In the South Atlantic, the commercial allocation is 52.56 percent and the recreational allocation is 47.44 percent, which results in a commercial ACL of 1,596,510 lb (724,165 kg), round weight, and a recreational ACL of 1,596,510 lb (724,165 kg), round weight. Therefore, NMFS has determined that the commercial ACL for yellowtail snapper may increase to 1,596,510 lb (724,165 kg), round weight.

The Council and NMFS are developing Regulatory Amendment 15 to the FMP to implement the increased commercial ACL for yellowtail snapper on a permanent basis. This regulatory amendment is expected to become effective sometime in 2013. Pursuant to section 305(c) of the Magnuson-Stevens Act, this

temporary rule may be effective for not more than 180 days after publication. However, it can be extended for an additional 186 days provided that the public has an opportunity to comment on the rule. Therefore, NMFS is soliciting public comment on this temporary rule, and may extend these measures for up to an additional 186 days if Regulatory Amendment 15 is not effective before then.

#### Need for This Temporary Rule

At its September 2012 meeting, the Council requested that NMFS promulgate emergency regulations to adjust the commercial ACL for yellowtail snapper based on the results of the May 2012 stock assessment conducted by FWRI, the SSC's anticipated October 2012 ABC recommendation, and the current commercial and recreational sector allocations. This temporary rule for emergency action is necessary to preserve a significant economic opportunity that otherwise might be foregone.

NMFS' Policy Guidelines for the Use of Emergency Rules (62 FR 44421, August 21, 1997) list three criteria for determining whether an emergency exists. This emergency rule is promulgated under those criteria. Specifically, in order to promulgate an emergency rule, NMFS' policy guidelines require that an emergency:

- (1) Result from recent, unforeseen events or recently

discovered circumstances; and

(2) Present serious conservation or management problems in the fishery; and

(3) Can be addressed through emergency regulations for which the immediate benefits outweigh the value of advance notice, public comment, and deliberative consideration of the impacts on participants to the same extent as would be expected under the normal rulemaking process.

The unforeseen circumstance in this case is that a new stock assessment has recently been completed by the FWRI providing new information on the status of yellowtail snapper. The assessment indicates that the stock is neither overfished nor undergoing overfishing, and that additional yellowtail snapper may be harvested without negatively impacting the stock.

Harvest of yellowtail snapper is very close to reaching the current commercial sector ACL. Not increasing the commercial ACL for yellowtail snapper, based on the latest stock assessment, could result in negative economic impacts for those who depend on the commercial harvest of yellowtail snapper, especially in the Florida Keys.

Finally, the immediate benefit of implementing this emergency action outweighs the value of advance notice and public comment. The Southeast Fisheries Science Center has



projected that if this rule is not implemented the commercial yellowtail snapper ACL would be reached in October 2012. NMFS must implement this temporary rule immediately to allow for the continued commercial harvest of this increased portion of the commercial ACL to give fishermen the opportunity to achieve OY for the fishery.

#### Classification

This action is issued pursuant to section 305(c) of the Magnuson-Stevens Act, 16 U.S.C. 1855(c). The Assistant Administrator for Fisheries, NOAA (AA), has determined that this temporary rule is necessary to preserve a significant economic opportunity that otherwise might be foregone for the yellowtail snapper component of the South Atlantic snapper-grouper fishery and is consistent with the Magnuson-Stevens Act and other applicable laws.

This temporary rule has been determined to be not significant for purposes of Executive Order 12866.

The AA finds good cause under 5 U.S.C. 553(b)(B) to waive prior notice and the opportunity for public comment because they would be contrary to the public interest. The Southeast Fisheries Science Center has projected that the commercial yellowtail snapper ACL would be reached in October 2012. Failure to increase the commercial ACL for yellowtail snapper

would result in unnecessary adverse economic impacts for those dependent upon the commercial harvest of yellowtail snapper, especially in the Florida Keys. NMFS must implement this temporary rule immediately to allow for continued commercial harvest of this increased portion of the commercial ACL to give fishermen the opportunity to achieve OY for the fishery. Comments submitted on this temporary rule through the Federal e-Rulemaking Portal: <http://www.regulations.gov> and received by NMFS no later than [insert date 30 days after date of publication in the FEDERAL REGISTER], will be considered during an extension of this temporary rule.

For the reasons listed above, the AA also finds good cause to waive the 30-day delay in effectiveness of the action under 5 U.S.C. 553(d)(3).

Because prior notice and opportunity for public comment are not required for this rule by 5 U.S.C. 553 or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 et seq. are inapplicable. Accordingly, no Regulatory Flexibility Analysis is required and none has been prepared.

List of Subjects in 50 CFR Part 622

Fisheries, Fishing, Puerto Rico, Reporting and  
recordkeeping requirements, Virgin Islands.

Dated: November 1, 2012.

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Samuel D. Rauch III, Deputy Assistant Administrator for Regulatory Programs,  
performing the functions and duties of the Assistant Administrator for Fisheries,  
National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 622 is  
amended as follows:

PART 622--FISHERIES OF THE CARIBBEAN, GULF, AND SOUTH ATLANTIC

1. The authority citation for part 622 continues to read  
as follows:

Authority: 16 U.S.C. 1801 et seq.

2. In § 622.49, paragraph (b)(14)(i) is suspended and  
paragraph (b)(14)(iii) is added to read as follows:

§ 622.49 Annual catch limits (ACLs), annual catch targets

(ACTs), and accountability measures (AMs).

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(b) \* \* \*

(14) \* \* \*

(iii) Commercial sector--(A) If commercial landings for yellowtail snapper, as estimated by the SRD, reach or are projected to reach the commercial ACL of 1,596,510 lb (724,165 kg), round weight, the AA will file a notification with the Office of the Federal Register to close the commercial sector for the remainder of the fishing year. On and after the effective date of such a notification, all sale or purchase of yellowtail snapper is prohibited and harvest or possession of this species in or from the South Atlantic EEZ is limited to the bag and possession limit. This bag and possession limit applies in the South Atlantic on board a vessel for which a valid Federal commercial or charter vessel/headboat permit for South Atlantic snapper-grouper has been issued, without regard to where such species were harvested, i.e., in state or Federal waters.

(B) If commercial landings exceed the ACL, and yellowtail snapper is overfished, based on the most recent Status of U.S. Fisheries Report to Congress, the AA will file a notification with the Office of the Federal Register, at or near the

beginning of the following fishing year to reduce the ACL for that following year by the amount of the overage in the prior fishing year.

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[FR Doc. 2012-27247 Filed 11/06/2012 at 8:45 am; Publication Date: 11/07/2012]